

SOLAR ENERGY PURCHASE AND SALE AGREEMENT

This SOLAR ENERGY PURCHASE AND SALE AGREEMENT (“Agreement”) is dated as of the [REDACTED] day of [REDACTED], 2019, by and between Emera Maine, a Maine corporation and transmission and distribution utility (“T&D”), and Three Rivers Solar Power, LLC, a Delaware limited liability company (“Seller”) (each a “Party” and together the “Parties”). This Agreement sets forth the terms and conditions under which Seller will transfer and sell Energy to T&D during the Term.

WHEREAS, Seller is developing a ground-mounted solar photovoltaic generation facility with a nameplate capacity of up to 100 MW_{AC} to be located on 1,115 acres of leased land in Hancock County, Maine, west of the West Branch of the Narraguagus River, and within T&D’s service territory (the “Facility”);

WHEREAS, Section 3210-C of Title 35-A of the Maine Revised Statutes authorizes the Maine Public Utilities Commission (“Commission”) to direct investor-owned transmission and distribution utilities to enter into long-term contracts for the purchase of capacity resources and associated energy as agents for their customers;

WHEREAS, under Section 3210-C of Title 35-A of the Maine Revised Statutes and Chapter 316 of the Commission’s Rules and Regulations, the Commission has conducted a solicitation for capacity resources and associated energy; and

WHEREAS, in Commission Docket No. 2018-00137, the Commission has evaluated the proposal of Seller and, through an Order Approving Term Sheet (Part II) dated March 12, 2019, and an Order Approving Long-Term Contract dated [REDACTED], 2019, has selected Seller to sell the Energy, and directed T&D to purchase the Energy, according to the terms and conditions herein.

NOW, THEREFORE, the Parties hereby agree as follows:

ARTICLE 1. DEFINITIONS

1.1 Definitions

As used in this Agreement, the following terms have the following meanings:

“Balance-of-Plant Contractor” means the primary contractor hired by Seller to provide engineering, procurement, and construction services for the Facility.

“Base Security” means either: (a) cash; (b) an irrevocable Letter of Credit that unconditionally obligates the issuer to honor claims or drafts thereunder within ten (10) Business Days after notice to the issuer of such irrevocable Letter of Credit; (c) other security acceptable to T&D; or (d) a corporate guarantee that meets the requirements of Sections 5.3.1 and 5.3.2.

“Base Security Amount” means \$4.5 million, which is the product of \$45 per kilowatt (kW_{AC}) and the Facility’s anticipated nameplate Capacity, or 100 megawatts (MW_{AC}), as measured in kilowatts (kW_{AC}).

“Business Day” means any day except a Saturday, Sunday, a Federal Reserve Bank holiday, a holiday recognized by the State of Maine, or a holiday as defined by NERC. A Business Day shall open at 8:00 a.m. and close at 5:00 p.m. local time for the relevant Party’s principal place of business. The relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment, or delivery is being sent and by whom the notice or payment or delivery is to be received.

“Capacity” means the full electricity generating capacity of the Facility as measured in megawatts (MW). At least ninety (90) days before the anticipated Full Notice to Proceed, Seller shall confirm to T&D the Capacity of the Facility.

“Capacity Value” means all value realized by Seller as a result of the monetization of the Capacity in the ISO-NE capacity market, including but not limited to FCM Payments and payments or penalties under the ISO-NE Pay-for Performance Incentive.

“Commercial Operation” means the Facility is operational and placed into service and such Facility has been constructed, tested, and is fully capable of operating for the purpose of generating electrical energy as contemplated in this Agreement.

“Commercial Operation Date” means that date on which the Facility first commences Commercial Operation. The Commercial Operation Date shall occur no later than the Commercial Operation Obligation Date.

“Commercial Operation Obligation Date” means December 31, 2022; except that, if Seller has executed an LGIA but has not reached Commercial Operation by December 31, 2022, the Commercial Operation Obligation Date shall mean December 31, 2023.

“Commission” has the meaning set forth in the preamble.

“Conditions Date” means the date on which all the conditions specified in Article 2 are satisfied, or are waived by the Party for whose benefit such condition exists. The Conditions Date shall be the date of the Parties’ executed versions of Exhibit A, except that if the Parties’ Exhibit As are executed on different dates, the Conditions Date shall be the date of the later-executed Exhibit A.

“Contract Price” has the meaning set forth in Section 3.5.

“Contract Quantity” means the amount of Energy attributed to the Facility in the ISO-NE real-time market.

“Contract Year” means the period commencing at 00:00 Eastern Prevailing Time on the Commercial Operation Date (or anniversary thereof) and ending at 23:59 Eastern

Prevailing Time on the day prior to the same date of each subsequent year during the Term. This Agreement provides for ten (10) Contract Years.

“Costs” means, with respect to the non-defaulting Party, brokerage fees, commissions, and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace a Terminated Transaction; and all reasonable attorneys’ fees and expenses incurred by the non-defaulting Party in connection with the termination of the Agreement, and calculated under Section 10.2.

“Credit Rating” means the long-term senior unsecured debt rating as issued by S&P or Moody’s. If the ratings by these two ratings agencies differ, then the lower rating will control. If such Party does not have a long-term senior unsecured debt rating, then “Credit Rating” shall mean the long-term corporate credit rating as issued by S&P or Moody’s. In the absence of such a rating by either S&P or Moody’s, then the long-term senior unsecured debt rating from Fitch will control. In the absence of a senior long-term unsecured debt rating, T&D shall assess Seller’s creditworthiness in its sole discretion.

“Credit Support” means the security as set forth for T&D or for Seller in Article 5.

“Delivery Period” has the meaning set forth in Section 3.2.

“Delivery Point” means the point at which the Facility interconnects with Emera Maine’s Line 93, which is a 115-kilovolt transmission system.

“Due Date” has the meaning set forth in Section 4.2.3.

“Effective Date” means the date on which this Agreement is fully executed, provided that the Effective Date shall occur on or after the date of the Commission’s order approving the form of this Agreement.

“Energy” means power produced from the Facility in the form of electricity, as measured in megawatt-hours (“MWh”) by the Revenue Grade Meter, that Seller shall deliver to T&D at the Delivery Point. Energy does not include Capacity Value, Ancillary Services, or Environmental Attributes.

“Energy Sales Charge” means the monthly amount T&D shall pay to Seller, which shall equal the product of the applicable Contract Price and the amount of Energy produced by the Facility during the month and delivered to T&D.

“Environmental Attributes” means any environmental credit, offset, or other benefit associated with the Facility and its output allocated, assigned or otherwise awarded by any governmental or international agency to Seller based in whole or in part on the fact that the Facility is a non-fossil fuel facility. Such environmental credits shall include, but not be limited to emissions credits, including credits triggered because such Facility does not produce carbon dioxide when generating electric energy, any renewable

energy credit, any production tax credit, investment tax credit, 1603 grants, or any other existing or future tax credits (however those tax credits may be identified or determined including, without limitation, energy, production, investment, and other such tax credits).

“Excusable Delay” means any delay that is caused by one or more of the following: (i) an event of Force Majeure, (ii) breach of this Agreement on the part of T&D, (iii) a delay by a Governmental Authority in the issuance of a permit or other consent that is beyond Seller’s control, or (iv) the applicable interconnection facilities having not been energized and backfeed power has not been made available, for reasons beyond Seller’s control, on or before the date that is ninety (90) days prior to the Commercial Operation Obligation Date.

“Excusable Interconnection Delay” means any delay not caused by Seller arising from T&D actions or failure to act, or the process of obtaining any required approvals from ISO-NE, with respect to the Facility’s interconnection. If a delay would otherwise satisfy the definition of both Excusable Delay and Excusable Interconnection Delay, it shall be considered Excusable Interconnection Delay.

“Exposure” with respect to a Party on a given date, means the Termination Payment that would be payable by such Party (as reasonably calculated by such Party under the terms of this Agreement and as reasonably agreed to by the Parties), if such day were the date on which a Termination Payment were to be calculated hereunder.

“Facility” has the meaning set forth in the preamble.

“FCM” means the ISO-NE Forward Capacity Market.

“FERC” means the Federal Energy Regulatory Commission, and any successor organization.

“First Base Security Payment” has the meaning set forth in Section 5.2.1.

“Fitch” means Fitch Ratings Ltd., its successors and assigns.

“Full Notice to Proceed” means the written notice delivered by Seller to its Balance-of-Plant Contractor specifying the date for the Balance-of-Plant Contractor to begin project work on the Facility.

“Gains” means, with respect to any Party, an amount equal to the net present value (using an eight percent (8%) discount rate) of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Agreement, determined in a commercially reasonable manner, and calculated under Section 10.2.1.

“Generator Forced Outage” means an immediate reduction in output or capacity or removal from service, in whole or in part, of a generating unit by reason of an emergency or threatened emergency, unanticipated failure, or other cause beyond the control of the owner or operator of the Facility, as specified in the relevant portions of the ISO-NE Rules.

“Generator Planned Outage” means the scheduled removal from service, in whole or in part, of a generating unit for inspection, maintenance or repair with the approval of the ISO-NE in accordance with the ISO-NE Rules.

“Governmental Authority” means any foreign, federal, state, local, or other governmental, regulatory, or administrative agency, court, commission, department, board, or other governmental subdivision, legislature, rulemaking board, court, tribunal, arbitrating body, or other governmental authority having jurisdiction or effective control over a Party.

“Interconnection Study” means any feasibility, system impact, or facilities study required (if at all) by ISO-NE Rules or any such study Seller elects to be performed for the purposes of interconnecting the Facility to T&D’s transmission and distribution system.

“Investment Grade” means (i) with regard to a Credit Rating assigned by S&P, a Credit Rating equal to or better than BBB-; (ii) with regard to a Credit Rating assigned by Moody’s, a Credit Rating equal to or better than Baa3; and (iii) with regard to a Credit Rating assigned by Fitch, a Credit Rating equal to or better than BBB-.

“ISO-NE” means ISO New England, Inc. or any successor entity.

“ISO-NE Market Rules and Manuals” means Section III of the ISO-NE Tariff and its implementing Manuals adopted by ISO-NE to govern the operation of the ISO-NE markets for energy, reserves and capability, as amended from time to time.

“ISO-NE Rules” means all rules and operating procedures adopted by ISO-NE, as such rules and operating procedures may be amended from time to time, including but not limited to, the ISO-NE Market Rules and Manuals and ISO-NE Operating Procedures.

“ISO-NE Tariff” means the ISO New England, Inc. Transmission, Markets and Services Tariff, FERC Electric Tariff No. 3, effective February 1, 2006, as may be amended from time to time.

“Letter(s) of Credit” means one or more irrevocable, transferable standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a credit rating of at least A- from S&P or A3 from Moody’s, in a form acceptable to the Party in whose favor the letter of credit is issued. Costs of a Letter of Credit shall be borne by the applicant for such Letter of Credit.

“LGIA” means the Large Generator Interconnection Agreement entered into by the Parties and ISO-NE pursuant to the ISO-NE Tariff for the purpose of interconnecting the Facility to T&D’s transmission and distribution system.

“Losses” means, with respect to any Party, an amount equal to the net present value (using an eight percent (8%) discount rate) of the economic loss to it, if any (exclusive of Costs), resulting from termination of the Agreement, determined in a

commercially reasonable manner, subject to Section 10.5. “Losses” shall not include any costs or damages incurred by T&D under the terms and conditions of this Agreement.

“Moody’s” means Moody’s Investors Service, its successors and assigns.

“NERC” means North American Electric Reliability Council or any successor entity.

“Node” means a point on the New England Transmission System at which Locational Marginal Prices are calculated.

“Node LMP” means the hourly Real Time Locational Marginal Price of Energy for the Node applicable to the Facility as established in accordance with ISO-NE Market Rule and Manuals, expressed in dollars per megawatt-hour (\$/MWh).

“Party” and “Parties” have the meanings set forth in the preamble.

“Payment Dispute” has the meaning set forth in Section 13.2.3.

“PDF” means portable document format.

“Rating Agency” means each of S&P, Moody’s, and Fitch.

“Replacement Downgrade Event” has the meaning set forth in Section 5.3.

“Replacement Security” has the meaning set forth in Section 5.3.

“Revenue Grade Meter” means a power production meter that measures to +/- 2% accuracy per the American National Standards Institute (ANSI) rule C12.1-2014.

“Second Base Security Payment” has the meaning set forth in Section 5.2.2.

“Seller” means Three Rivers Solar Power, LLC and its permitted successors and assigns.

“S&P” means Standard & Poor’s Rating Group and its successors and assigns.

“T&D” means Emera Maine and its permitted successors and assigns.

“T&D Downgrade Event” has the meaning set forth in Section 5.1.1.

“Term” has the meaning set forth in Section 2.5.

“Terminated Transaction” means a termination of this Agreement under conditions that result in a Termination Payment.

“Termination Payment” has the meaning set forth in Section 10.2.

“Third Base Security Payment” has the meaning set forth in Section 5.2.3.

This Agreement includes certain capitalized terms that are not explicitly defined in this Section 1.1 or elsewhere in this Agreement. Such capitalized terms shall have the meanings specified in the ISO-NE Tariff and the ISO-NE Market Rules and Manuals, which meanings are incorporated herein by reference and made a part hereof. In the event of any inconsistency between a definition contained in this Agreement and a definition contained in either the ISO-NE Tariff or the ISO-NE Market Rules and Manuals, the definition in this Agreement will control for purposes of this Agreement.

Further, all references to Articles, Sections, and Subsections are references to those parts of this Agreement, unless the context clearly indicates otherwise.

ARTICLE 2. CONDITIONS PRECEDENT, CONDITIONS DATE, AND TERM

2.1 Conditions on Obligations of T&D and Seller

The obligations of T&D and Seller under this Agreement and the designation of the Conditions Date for the commencement of this Agreement are subject to the fulfillment and satisfaction of each of the following conditions precedent, any one or more of which may only be waived in writing, in whole or in part, by the Party for whose benefit such condition exists. As used in this Agreement, the “Party for whose benefit a condition exists” means the Party whose obligation is contingent upon the occurrence of that condition.

2.1.1 Conditions on Obligations of T&D

- (a) Seller shall have delivered to T&D within five (5) Business Days of the Execution Date of this Agreement any credit support required under Section 5.2.
- (b) All representations and warranties of Seller contained in this Agreement shall be true and correct in all material respects as of the date when made and as of the Conditions Date as though such representations and warranties had been made or given on such date (except to the extent such representations and warranties specifically pertain to an earlier date), and Seller shall have delivered to T&D a certificate, substantially in the form contained in Exhibit A, and signed by one of its duly authorized officers specifying that each of the conditions applicable to Seller have been satisfied or waived.
- (c) There shall not be any litigation or proceeding pending that restrains, prohibits, or prevents or seeks to restrain, prohibit, or prevent, the Parties (or either Party) from consummating the transactions contemplated by this Agreement.
- (d) All T&D required regulatory approvals shall have been received and be final and in full force and effect pursuant to a final, non-appealable order.

2.1.2 Conditions on Obligations of Seller

- (a) All representations and warranties of T&D contained in this Agreement shall be true and correct in all material respects as of the date when made and as of the Conditions Date as though such representations and warranties had been made or given on such date (except to the extent such representations and warranties specifically pertain to an earlier date), and T&D shall have delivered to Seller a certificate, substantially in the form contained in Exhibit A, and signed by one of its duly authorized officers specifying that each of the conditions applicable to T&D have been satisfied or waived.
- (b) There shall not be any litigation or proceeding pending that restrains, prohibits, or prevents or seeks to restrain, prohibit, or prevent the Parties (or either Party) from consummating the transactions contemplated by this Agreement.
- (c) All Seller required regulatory approvals shall have been received by Seller and be final and in full force and effect pursuant to a final, non-appealable order, which approvals shall not have materially modified the express terms and conditions of this Agreement.
- (d) Seller shall have obtained all necessary agreements for the interconnection of the Facility.

2.2 Completion of Development Milestones

Seller shall achieve the following milestones in accordance with the following deadlines:

- 2.2.1 Within ten (10) days of the Effective Date of this Agreement, Seller will complete a preliminary environmental and permitting assessment, and submit an interconnection request to ISO-NE.
- 2.2.2 Seller shall execute each material ISO-NE Interconnection Study agreement within thirty (30) days of Seller's receipt of such agreement from ISO-NE. Seller shall provide an executed copy of each Interconnection Study agreement to T&D within fourteen (14) days of execution.
- 2.2.3 Seller will submit all Maine Department of Environmental Protection permit applications by December 31, 2019.
- 2.2.4 Seller will receive all Maine Department of Environmental Protection permits by December 31, 2020.
- 2.2.5 By December 31, 2022, the Parties will execute an LGIA.

If Seller fails to meet any milestone set forth in Section 2.2, as may be adjusted from time to time, then Seller shall notify the Commission and T&D of the delay and the reason(s) for the delay. Upon receipt of such notification, staff of the Commission may convene a meeting of representatives of T&D and Seller to discuss the reasons for delay and formulate a plan for completing the outstanding milestone. Upon a showing that the delay was caused by Excusable Delay, then Seller shall be given ninety (90) days beyond the applicable deadline to remedy the failure by completing the outstanding milestone; provided that, upon a showing that the delay was caused by Excusable Interconnection Delay, then the deadline to complete the outstanding milestone shall be extended for a period equal to the duration of the Excusable Interconnection Delay plus ninety (90) days (in either case, the “Cure Period”). A failure to complete the outstanding milestone within the Cure Period shall be governed by Section 2.4, unless otherwise ordered by the Commission. Seller shall notify the Commission and T&D of the status of the milestone upon the expiration of the Cure Period or the completion of the outstanding milestone, whichever occurs sooner.

2.3 Satisfaction of Conditions

Each Party agrees to cooperate in good faith with the other Party and shall take all practicable actions and devote resources reasonably necessary to obtain satisfaction of the conditions set forth in Section 2.1 and 2.2 as soon as reasonably possible. If Seller terminates this Agreement due to failure of a condition set forth in Section 2.1.2, T&D shall return to Seller any previously provided credit support.

2.4 Failure to Satisfy Conditions

If conditions set forth in Section 2.1.1 (Conditions on Obligations of T&D) or Section 2.1.2 (Conditions on Obligations of Seller) are not satisfied or waived before the earlier of (i) the Commercial Operation Obligation Date, or (ii) the date that is sixty (60) days before the anticipated Full Notice to Proceed, then either Party, at its option, may terminate this Agreement by delivering a notice of termination to the other Party. Notice of termination for failure of a condition must be in writing and issued prior to the date when the condition is belatedly satisfied or waived by the Party for whose benefit such condition exists, and shall identify in reasonable detail the condition(s) which have not been satisfied. Upon any termination of this Agreement in accordance with this Section 2.3, neither Party shall have any obligation to the other under this Agreement, and each Party shall return to the other Party any previously provided credit support.

2.5 Term

Unless earlier terminated in accordance with Section 2.4 or as otherwise provided in Article 10, this Agreement shall remain in effect from the Effective Date through 00:00 Eastern Prevailing Time on the eleventh (11th) anniversary of the Commercial Operation Date (“Term”). At the expiration of the Term, the Parties shall no longer be bound by the terms and conditions of this Agreement, except as necessary to enforce the rights and obligations of the Parties arising under this Agreement prior to the expiration of the Term.

ARTICLE 3. TERMS OF TRANSACTION

3.1 Scope

This Agreement enables Seller to sell and deliver to T&D and T&D to purchase and receive from Seller the Contract Quantity of Energy from the Facility subject to the terms of this Agreement.

3.2 Delivery Period

The term of deliveries under this Agreement shall commence on the Commercial Operation Date and shall terminate at 00:00 Eastern Prevailing Time on the eleventh (11th) anniversary of the Commercial Operation Date (the “Delivery Period”).

3.3 Contract Quantity of Energy

Beginning on the Commercial Operation Date, the Contract Quantity of Energy is all of the Energy produced by the Facility and delivered to T&D at the Delivery Point pursuant to Section 3.6 in each hour as measured at the Facility’s Revenue Grade Meter as determined in accordance with ISO-NE Rules.

3.4 Energy Only

The Contract Quantity of Energy is the sole product conveyed from Seller to T&D under this Agreement. Seller shall retain (a) all Environmental Attributes of or produced by the Facility, (b) all value from Ancillary Services provided by the Facility, and (c) all Capacity Value created by the Facility. T&D expressly acknowledges and agrees that: (i) it shall have no right, claim or entitlement to any service or product of the Facility other than the Contract Quantity of Energy; (ii) T&D shall not claim or declare any right to the Facility’s Environmental Attributes to any third party, including, but not limited to, any Governmental Authority; and (iii) T&D hereby waives any future claim it may have by operation of law to any service or product of the Facility other than the Contract Quantity of Energy.

3.5 Contract Price

The Contract Price in each hour shall be as set forth in Exhibit B to this Agreement.

3.6 Delivery

Seller shall deliver the Contract Quantity of Energy to T&D at the Delivery Point. If ISO-NE establishes a new Node applicable to the Facility, the Parties agree to negotiate in good faith to amend this Section 3.6 to reflect the appropriate Delivery Point. If the Parties are unable to reach agreement on the appropriate Delivery Point, the matter shall be subject to the dispute resolution provisions of Article 13 of this Agreement.

3.7 Internal Bilateral Transactions

The transfer of the Contract Quantity of Energy from Seller to T&D shall be implemented through real-time bilateral transactions in the market settlement system administered by ISO-NE. Unless otherwise provided in internal bilateral transactions (“IBT”) procedures (if any) set forth in this Agreement, Seller shall submit market transactions to ISO-NE that transfer to T&D the Contract Quantity of Energy, with hourly quantities, delivery point, and other transaction characteristics that replicate the transactions submitted by Seller to ISO-NE, and T&D shall be obligated to accept and confirm submitted transactions, provided they are correct, in accordance with all applicable ISO-NE Market Rules and Manuals. In implementing IBT procedures, the Parties shall comply with the IBT Protocols as specified in ISO-NE Market Rules and Manuals. To the extent there are ISO-NE Schedule 2 charges arising from the IBT, Seller shall pay for any such charges related to the Seller-side of the transaction and T&D shall pay for any such charges related to the T&D-side of the transaction.

3.8 Seller’s and T&D’s Obligations

During the Delivery Period, Seller shall sell and deliver, or cause to be delivered, and T&D shall purchase and receive, or cause to be received, at the Delivery Point the Contract Quantity of Energy and T&D shall pay Seller the Contract Sales Charge pursuant to the terms of this Agreement. Seller and T&D, respectively, shall be responsible for any costs or charges imposed on or associated with the delivery of the Contract Quantity of Energy, including control area services, inadvertent Energy flows, emission allowances and environmental charges, transmission losses and loss charges relating to the transmission of the Contract Quantity of Energy (i) up to the Delivery Point in the case of Seller and (ii) at and from the Delivery Point in the case of T&D.

3.9 Transmission and Scheduling

Seller shall arrange and be responsible for any necessary transmission service to deliver the Contract Quantity of Energy to the Delivery Point. Seller shall not be responsible for transmission service at and from the Delivery Point.

3.10 Title; Risk of Loss

As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Contract Quantity of Energy prior to the Delivery Point and T&D shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of the Contract Quantity of Energy at and from the Delivery Point. Title to and risk of loss of the Energy shall transfer from Seller to T&D at the Delivery Point.

3.11 Facility Planned Outages

Seller agrees that the only outages of the Facility shall be Generator Planned Outages or Generator Forced Outages. Seller shall determine Generator Planned Outages based on its commercially reasonable judgment. Seller shall notify T&D in writing at

least ninety (90) days in advance of its Generator Planned Outage schedule. Seller shall provide notice to and consult with T&D regarding any modifications to its Generator Planned Outage when the need for such modifications becomes known to Seller. Seller agrees that it will schedule Generator Planned Outage in accordance with the ISO-NE Rules. During the months of January, February, July, and August in every Contract Year, Seller will make good faith efforts to avoid and minimize any Generator Planned Outages, provided that Generator Planned Outages shall be permitted if (i) Seller needs to perform such outages to comply with NERC requirements or other regulations, (ii) such outage is required to avoid damage to the Facility, or (iii) such outage is necessary to maintain equipment warranties and cannot be scheduled outside the months of January, February, July, or August.

ARTICLE 4. PRICE, BILLING, AND PAYMENT

4.1 Sales Charge

In consideration for the transfer of the Contract Quantity of Energy to T&D hereunder, T&D shall pay to Seller, each month during the Term hereof, the Energy Sales Charge for Energy actually provided by Seller under this Agreement.

4.2 Billing and Payment

4.2.1 Regular Billing

Seller shall bill the Contract Sales Charge by sending an invoice to T&D on or before the fifteenth (15th) day of each month. Each invoice shall set forth the calculation of the Contract Sales Charge for the Energy delivered to T&D through the last day of the immediately preceding month based upon data provided to Seller by ISO-NE. If, during the ISO-NE Data Reconciliation Process, the amount of Energy delivered is determined to be different than the amount Seller initially billed, Seller shall send T&D a revised invoice, reflecting the resettled quantity, within ten (10) Business Days of the issuance of the ISO-NE invoice containing the final resettled quantities.

4.2.2 Billing Address

Unless the Parties agree to the use of electronic mail, Seller shall send invoices to T&D by first class mail, courier, or overnight delivery service to:

Address:

Emera Maine
P.O. Box 932
Bangor, ME 04402-0932

Attn: Accounts Payable
apayable@emeramaine.com

By thirty (30) days' prior written notice to Seller, T&D may change the person or the address to which the invoice will be sent.

4.2.3 Payment by T&D

- (a) T&D shall pay the amount stated in any invoice from Seller upon the later of (i) ten (10) days of the date T&D receives the invoice or (ii) the twenty-fifth (25th) day of the month in which T&D receives the invoice ("Due Date"), or, if T&D in good faith objects to all or a portion of the invoice, T&D shall on or before the Due Date (y) pay the undisputed portion of the invoice and (z) provide an itemized statement of its objections setting forth in reasonable detail the basis for its objections. If T&D does not object prior to the Due Date, T&D shall be obligated to pay the full amount of such invoice, but T&D may subsequently object to such invoice and, if the objection proves to be correct, receive a refund of the disputed amount, plus interest (calculated using the Dispute Interest Rate set forth in Section 4.2.3(b)) from the date of T&D's original payment through the date of Seller's refund payment. If T&D does not object to an invoice within twenty-four (24) months of the date of the invoice, the invoice shall be binding upon T&D and Seller and not subject to challenge by either Party. The right to dispute or object to an invoice, shall, subject to the time limitation provided in this Section 4.2.3(a), survive the expiration or termination of this Agreement. Payments shall be made by electronic funds transfer to an account designated by Seller in the invoice or in a notice delivered to T&D.
- (b) Any invoiced amounts remaining unpaid and not objected to after the expiration of the period for providing notice of a dispute pursuant to Section 4.2.3(a) shall bear interest accruing from the Due Date at an annual interest rate equal to the lesser of the maximum rate permitted by the applicable law and the prime rate (sometimes referred to as base rate) for corporate loans as published by *The Wall Street Journal*, in the money rates section, or, if *The Wall Street Journal* ceases publication of such a rate, an equivalent rate selected by Seller, as such rate may be in effect from time to time during the period any such amounts remain unpaid, plus a margin of 200 basis points ("Late Payment Rate"). Any amounts which are the subject of a timely, good-faith dispute by Seller or T&D but which are subsequently determined to be due and owing shall bear interest accruing from the due date at an annual interest rate equal to the prime rate, as defined in the previous sentence ("Dispute Interest Rate").
- (c) Unless the Parties mutually agree otherwise in writing, any payment due under Subsection 4.2.3(a) or 4.2.3(b) shall not be

subject to monthly netting established by the Parties in the ordinary course of trading and shall be made without setoff or any other reduction on account of any claim Seller may have against T&D, other than a claim for billing adjustment as set forth in Subsection 4.2.3(a).

- (d) All payments and refunds under this Agreement shall be made in United States dollars.

4.3 Audit Rights of Parties

Each Party, its affiliates and any third-party representative of a Party shall have the right, at its sole expense, and upon not less than thirty (30) days' notice to the other Party, to examine the records of the other Party related to the Facility's production of Energy, the calculation of payments due from one Party to the other, or records supporting or related to any claim by Seller of a Force Majeure event, with such examination to occur during normal business hours upon reasonable notice. Any information gathered during such examination shall constitute Confidential Information subject to the requirements of Article 8.

4.4 Billing Adjustments

If billing adjustments are required as the result of meter inaccuracies or any other error, T&D and Seller will work together to correct the billing. Notwithstanding the foregoing, errors in metering or in generation settlement may be corrected, and associated financial adjustments may be made, only within the time specified in the ISO-NE Market Rules, Manuals and Operating Procedures and T&D shall have no obligation to correct any errors outside of this time frame.

ARTICLE 5. CREDIT SUPPORT AND PERFORMANCE ASSURANCE

5.1 T&D Credit Support

- 5.1.1 If, at any time during the Term, (1) the Credit Rating assigned to T&D by a Rating Agency, or if T&D does not have a Credit Rating, then the rating a Rating Agency then assigns to T&D as an issuer rating (or the T&D Guarantor, if a guarantee under Section 5.3 is then in effect), falls below Investment Grade or (2) if T&D does not have a Credit Rating, T&D's Net Worth is less than two-hundred seventy-five million United States dollars (\$275,000,000) (either event constituting a "T&D Downgrade Event"), then T&D (or the T&D Guarantor, if a guarantee under Section 5.3 is then in effect) shall promptly notify Seller of the T&D Downgrade Event and shall deliver to Seller credit support in a form that meets the definition of Replacement Security within five (5) Business Days of the T&D Downgrade Event. "Net Worth" means the sum, but without duplication, of (a) the value stated on the books of T&D of the capital stock of T&D and its subsidiaries plus (b) the amount of the paid-in capital and retained earnings of T&D and its subsidiaries, in each case as such amounts would be shown on a consolidated balance sheet of T&D and its subsidiaries as of the time

- prepared in accordance with generally accepted accounting principles (“GAAP”).
- 5.1.2 If, after delivery of the Replacement Security following a T&D Downgrade Event, the Credit Rating of T&D is restored to Investment Grade or (if T&D does not have a Credit Rating) T&D’s Net Worth is equal to or exceeds two-hundred seventy-five million United States dollars (\$275,000,000), Seller shall return the Replacement Security to T&D within five (5) Business Days of notification from T&D of the upgrade.
- 5.1.3 At the expiration of the Term, Seller shall return or release all unused Credit Support, with interest if applicable, within five (5) Business Days.

5.2 Seller Credit Support

- 5.2.1 Within five (5) Business Days after execution of this Agreement, Seller shall deliver to T&D Base Security that equals 10% of the Base Security Amount (“First Base Security Payment”).
- 5.2.2 On the date that is the earlier of (a) five (5) Business Days after execution of the LGIA for the Facility, or (b) December 31, 2020, Seller shall deliver to T&D Base Security that equals 40% of the Base Security Amount (“Second Base Security Payment”).
- 5.2.3 On the date that is the earlier of (a) the date that Seller issues the Full Notice to Proceed to the Facility’s Balance-of-Plant Contractor or (b) December 31, 2021, Seller shall deliver to T&D Base Security that equals 50% of the Base Security Amount (“Third Base Security Payment”).
- 5.2.4 The Base Security Amount shall be maintained during the Term, as adjusted to reflect any nameplate capacity additions or retirements.
- 5.2.5 [Reserved]
- 5.2.6 At the expiration of the Term, T&D shall return or release all unused Credit Support, with interest if applicable, to Seller within five (5) Business Days.

5.3 Replacement Security

“Replacement Security” shall mean either: (a) cash; (b) an irrevocable Letter of Credit issued by a commercial bank authorized to do business and in good standing in the United States of America with a minimum long-term unsecured debt rating of at least “A-” by S&P or “A3” by Moody’s, or an equivalent debt rating by one of these agencies; (c) with respect to Seller, a corporate guarantee that meets the requirements of Sections 5.3.1 and 5.3.2; (d) with respect to T&D, a corporate guarantee that meets the requirements of Section 5.3.1; or (e) other security acceptable to the Party receiving such Replacement Security. If, at any time, the issuer of the Replacement Security fails to possess the minimum applicable requirements set forth in (b), (c), or (d) in the immediately foregoing sentence (such occurrence defined herein as a “Replacement

Downgrade Event”), the Party causing such Replacement Security to be issued shall deliver replacement credit support in a form and in the amount that meets the definition of Replacement Security within five (5) Business Days of notice of such Replacement Downgrade Event. The other Party shall return the original Replacement Security to the Party causing the additional Replacement Security to be issued within five (5) Business Days of the provision of such additional Replacement Security to the other Party. The form of any Replacement Security issued under this Section 5.3 (*i.e.*, cash, irrevocable letter of credit, or corporate guarantee) shall be at the discretion of the Party causing such Replacement Security to be issued, provided that the form of the Replacement Security meets the requirements applicable to the form under this Agreement.

5.3.1 A corporate guarantor shall meet all the following requirements.

- (a) The guarantor shall have been in continuous operation for at least five (5) years immediately preceding the date of the corporate guarantee.
- (b) The guarantor shall have an issuer or bond rating of at least “BBB” by S&P or “Baa2” by Moody’s, or an equivalent debt rating by one of these Rating Agencies.
- (c) The guarantor shall meet the asset and net worth test as set forth in Chapter 301 or equivalent rule of the Commission.
- (d) The guarantor shall have an office for service of process in the State of Maine or otherwise have a registered agent for service of process in the State of Maine.

In addition to the requirements in Section 5.3.1, Seller’s use of a corporate guarantee shall be subject to the following requirements in Sections 5.3.2–5.3.5.

5.3.2 T&D and Commission shall receive notice of the proposed guarantor at least sixty (60) days in advance of the proposed date of the corporate guarantee. The notice shall include information about the proposed guarantor sufficient to allow T&D and the Commission to evaluate the creditworthiness of the guarantor, including audited financial statements, and, if available, the annual report to stockholders, SEC Form 10K, and the most recent credit rating from each rating agency that has issued a rating for the guarantor.

5.3.3 T&D and Commission may reject the proposed guarantor within forty-five (45) days of the notice proposing a corporate guarantee. If T&D and the Commission do not reject the proposed guarantor within forty-five (45) days, the proposed guarantor will be deemed acceptable.

5.3.4 Seller shall notify T&D and Commission within five (5) Business Days in the event of any change to the credit rating of the guarantor or in the event the guarantor is placed on a Rating Agency’s credit watch with negative indications.

5.3.5 T&D shall have the right to require Replacement Security if the guarantor credit rating falls below “BBB” by S&P or “Baa2” by Moody’s, or an equivalent debt rating by one of these Rating Agencies.

5.4 Cost and Proceeds of Credit Support

All costs associated with obtaining any credit support required by Sections 5.1, 5.2, or 5.3 shall be the sole responsibility of the Party that caused such credit support to be issued. The non-defaulting Party hereunder may use, apply, or retain the whole or any part of the proceeds of credit support issued in favor of such non-defaulting Party for the payment of amounts owed under Article 3.

5.5 Security Interest

To secure its obligations under this Agreement and if either or both Parties deliver cash as security hereunder, such Party (the “Pledgor”) shall pledge, assign, convey, and transfer to the other Party (the “Secured Party”), and shall grant to the Secured Party, a present and continuing first priority security interest in and to, and a general first lien upon and right of set off against, all such cash collateral and all proceeds thereof. Pledgor agrees to take such action as the Secured Party may reasonably request, in order to perfect the Secured Party’s continuing security interest in, lien on, and right of setoff against such cash collateral and grants authority to the Secured Party to take such actions necessary to perfect the foregoing interests. This Agreement is a Security Agreement under the Uniform Commercial Code of the State of Maine, codified at Title 11 of the Maine Revised Statutes, as amended from time to time.

5.6 Credit Rating Downgrade

If, during the term of this Agreement, there is an adverse change in the financial condition of Seller such that any of the Rating Agencies downgrades or issues a downgrade warning, Seller must so inform T&D within five (5) Business Days of such downgrade or warning.

5.7 Information to Be Provided

If T&D or Seller has a Credit Rating and thereafter ceases to have a Credit Rating, T&D and Seller or Seller’s Guarantor, as the case may be, will provide the other Party, as soon as reasonably practicable following a written request from the other Party, its or its guarantor’s (as applicable) annual audited financial statements prepared in accordance with generally accepted accounting principles (as defined or applied in the providing Party’s jurisdiction of incorporation or statement preparation) (“GAAP”) and quarterly unaudited consolidated financial statements prepared in accordance with GAAP (subject to normal year-end adjustments and the omission of footnotes), and in each case fairly presenting the financial condition of the applicable entity or entities (which each Party hereby represents and warrants as such) and certified by an authorized officer of the applicable entity; provided, however, that if such entity is required to make or makes its annual audited and quarterly unaudited financial statements available to the public, then the Party shall use public sources to obtain such information.

ARTICLE 6. DELIVERY POINT

6.1 Delivery Point

Seller shall deliver Energy to the Delivery Point, which shall be located in the ISO-NE control area.

ARTICLE 7. REPRESENTATIONS AND WARRANTIES

7.1 Representations and Warranties of T&D

T&D hereby represents and warrants to Seller that, as of the Effective Date:

- 7.1.1 T&D is a corporation duly organized, validly existing and in good standing under the laws of the State of Maine and is duly qualified to do business in all jurisdictions where such qualification is required or where such qualification is necessary for it to perform its obligations hereunder.
- 7.1.2 T&D has full power and authority to carry on its business as now being conducted, to enter into this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate action and do not and will not contravene its organizational documents or conflict with, result in a breach of, or entitle T&D (with due notice or lapse of time or both) to terminate, accelerate, or declare a default under, any agreement or instrument to which it is a party or by which it is bound. The execution, delivery and performance by T&D of this Agreement will not result in any violation by it of any law, any order of any court or other agency of government, rule, or regulation applicable to it. T&D is not a party to, nor subject to or bound by, any judgment, injunction, or decree of any court or other governmental entity which may restrict or interfere with its performance of this Agreement.
- 7.1.3 This Agreement is the legal, valid, and binding obligation of T&D, enforceable against it in accordance with its terms, except as such enforcement may be subject to bankruptcy, insolvency, reorganization, fraudulent conveyance, avoidance, preferential transfer, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and by general principles of equity that may limit the availability of equitable remedies and contractual obligations generally (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law), and the remedy of specific performance and injunctive relief may be subject to the discretion of the court before which any proceeding therefore may be brought.
- 7.1.4 Except for T&D required regulatory approvals, no consent, waiver, order, approval, authorization or order of, or registration, qualification or filing with, any court or other governmental agency or authority is required for the execution, delivery and performance by T&D of this Agreement and the consummation by T&D of the transactions contemplated hereby, except such consents which have

been obtained, and as to such consents the same are final, are in full force and effect, and are not subject to any appeal or further judicial or administrative proceedings. No consent or waiver of any party to any contract to which T&D is a party or by which T&D is bound is required for the execution, delivery, and performance by T&D of this Agreement.

- 7.1.5 There is no action, suit, grievance, arbitration, or proceeding (other than proceedings of general applicability to the electrical generation, transmission, and distribution industry and proceedings in the ordinary course of business to obtain authorizations, approvals and permits) pending or, to the knowledge of T&D, threatened against or affecting T&D at law or in equity, before any federal, state, municipal, or other governmental court, department, commission, board, arbitrator, bureau, agency, or instrumentality which prohibits or impairs T&D's ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby.
- 7.1.6 There are no bankruptcy or insolvency proceedings pending or being contemplated by T&D or, to its knowledge, threatened against T&D.
- 7.1.7 No Event of Default with respect to T&D has occurred and is continuing and no such event or circumstance would occur as a result of T&D entering into or performing its obligations under this Agreement.

7.2 Representations and Warranties of Seller

Seller hereby represents and warrants to T&D that as of the Effective Date:

- 7.2.1 Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Delaware and is duly qualified to do business in all jurisdictions where such qualification is required or where such qualification is necessary for it to perform its obligations hereunder.
- 7.2.2 Seller has full power and authority to carry on its business as now being conducted, to enter into this Agreement and perform its obligations hereunder. The execution, delivery and performance of this Agreement have been duly authorized by all necessary corporate or other organizational action and do not and will not contravene its organizational documents or conflict with, result in a breach of, or entitle Seller (with due notice or lapse of time or both) to terminate, accelerate, or declare a default under, any agreement or instrument to which it is a party or by which it is bound. The execution, delivery and performance of this Agreement by Seller will not result in any violation by it of any law, any order of any court or other agency of government, rule, or regulation applicable to it. Seller is not a party to, nor subject to or bound by, any judgment, injunction or decree of any court or other governmental entity which may restrict or interfere with its performance of this Agreement.
- 7.2.3 This Agreement is the legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforcement may be subject

- to bankruptcy, insolvency, reorganization, fraudulent conveyance, avoidance, preferential transfer, moratorium or other similar laws now or hereafter in effect relating to creditors' rights generally and by general principles of equity that may limit the availability of equitable remedies and contractual obligations generally (regardless of whether the issue of enforceability is considered in a proceeding in equity or at law), and the remedy of specific performance and injunctive relief may be subject to the discretion of the court before which any proceeding therefore may be brought.
- 7.2.4 No consent, waiver, order, approval, authorization, or order of, or registration, qualification or filing with, any court or other governmental agency or authority is required for the execution and delivery by Seller of this Agreement. Any consent, waiver, order, approval, authorization, or order of, or registration, qualification, or filing with, any court or other governmental agency or authority required for Seller's performance of this Agreement and the consummation by Seller of the transactions contemplated hereby, have been or will be obtained, and as to such consents the same are or will be final, will be in full force and effect, and will not be subject to any appeal or further judicial or administrative proceedings. No consent or waiver of any party to any contract to which Seller is a party or by which Seller is bound is required for the execution, delivery, and performance by Seller of this Agreement.
- 7.2.5 There is no action, suit, grievance, arbitration, or proceeding (other than proceedings of general applicability to the electrical generation, transmission, and distribution industry and proceedings in the ordinary course of business to obtain authorizations, approvals, and permits) pending or, to the knowledge of Seller, threatened against or affecting Seller at law or in equity, before any federal, state, municipal, or other governmental court, department, commission, board, arbitrator, bureau, agency, or instrumentality which prohibits or impairs Seller's ability to execute and deliver this Agreement or to consummate any of the transactions contemplated hereby.
- 7.2.6 There are no bankruptcy or insolvency proceedings pending or being contemplated by Seller or, to its knowledge, threatened against Seller.
- 7.2.7 No Event of Default with respect to Seller has occurred and is continuing and no such event or circumstance would occur as a result of Seller entering into or performing its obligations under this Agreement.

ARTICLE 8. CONFIDENTIALITY

8.1 Confidentiality

The Parties agree not to disclose to any third person and to keep confidential, and to cause and instruct their affiliates, officers, directors, members, employees and representatives not to disclose to any third party and to keep confidential, any and all information designated in writing by a Party as confidential, proprietary or trade secret

and obtained by either Party from the other relating to this Agreement or the underlying transactions without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed; provided, however, that any information may be disclosed by a receiving Party (i) if required by applicable laws and regulations or by any subpoena or similar legal process so long as the Party whose information is being disclosed is given written notice, if such notice is practicable, at least five (5) Business Days prior to such disclosure; (ii) if the information is in the public domain or the disclosing Party shall have otherwise made the information public or shall have consented in writing prior to any such disclosure; (iii) in connection with the required submission or disclosure of this Agreement or any of its terms to the Commission; or (iv) if the information was known to the receiving Party independent of receipt from the disclosing Party and without violation of this Agreement by the receiving Party. The Parties agree that all written communications, including electronic communications, by Seller to T&D during the course of negotiation of this Agreement and concerning the terms of this Agreement, shall be deemed confidential for purposes of this Section 8.1.

- 8.1.1 Notwithstanding the provisions of Section 8.1 above, the Parties agree that, upon execution of this Agreement and upon final Commission approval of this Agreement or the entry of a final Commission order authorizing T&D to enter into this Agreement, this Agreement shall be a public record of the Commission. In addition, the parties agree that T&D may file reports of transactions under this Agreement with the Commission and with the FERC, and the contents of such reports shall not be confidential.
- 8.1.2 The Parties shall at all times comply with the ISO-NE Information Policy. If the ISO-NE Information Policy would impose a stricter confidentiality standard on either Party with regard to any information relating to this Agreement, the Parties agree to comply with that stricter confidentiality standard.
- 8.1.3 Notwithstanding anything to the contrary in this Section 8.1, in the event of any required disclosure of confidential information under this Section 8.1, the disclosing Party shall reasonably cooperate with the other Party in efforts to limit the disclosure and otherwise redact such confidential information requested by the non-disclosing Party to the maximum extent permitted by law.

8.2 Equitable Relief

The Parties agree that remedies at law may be inadequate to protect the disclosing Party in the event of a breach of confidentiality, and the receiving Party may seek a remedy of injunctive relief to prevent the continuation of any such breach without proof of actual damages. The rights and duties accruing from this provision may not be transferred or assigned by any Party without the prior written consent of the other Party.

ARTICLE 9. EVENTS OF DEFAULT

9.1 Events of Default by Seller

Any one or more of the following shall constitute an “Event of Default” hereunder with respect to Seller:

- (a) the Facility fails to achieve Commercial Operation by 23:59 Eastern Prevailing Time on the Commercial Operation Obligation Date;
- (b) default shall occur in the payment of any amounts due from Seller to T&D hereunder and such failure continues for more than ten (10) Business Days after written notice of such failure;
- (c) Seller shall fail to deliver and maintain any Credit Support as required by Article 5, and such failure continues for more than ten (10) Business Days after written notice of such failure from T&D;
- (d) Seller shall fail to either (i) maintain, from and after the Commercial Operation Date, an effective Market Participant Service Agreement under the ISO-NE Tariff or (ii) maintain, from and after the Commercial Operation Date, a settlement account established in accordance with the ISO-NE Rules which is sufficient to implement this Agreement, and such failure continues for more than five (5) Business Days after written notice of such failure from T&D;
- (e) Seller shall fail to provide T&D with notice of a downgrade by a Rating Agency, as required by Section 5.6;
- (f) default shall occur in the performance of any other covenant or condition to be performed by Seller hereunder and such default is not cured within thirty (30) days after written notice from T&D specifying the nature of such default, provided that, if Seller promptly commences and maintains diligent efforts to cure such default, then the period to cure the default shall be extended up to an additional sixty (60) days as long as such diligent efforts to cure continue;
- (g) a custodian, receiver, liquidator or trustee of Seller, or of a material portion of the property of Seller, is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or Seller makes an assignment for the benefit of its creditors other than an assignment in accordance with Section 14.1.1 or admits in writing its inability to pay its debts as they mature; or Seller is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal

Bankruptcy Code against Seller; or any of the material property of Seller is sequestered by court order and the order remains in effect for more than sixty (60) days; or a petition is filed against Seller under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within sixty (60) days after filing; or

- (h) Seller files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee, or liquidator of Seller or a material portion of the property of Seller.

9.2 Events of Default by T&D

Any one or more of the following shall constitute an “Event of Default” hereunder with respect to T&D:

- (a) T&D shall fail to pay any amounts due from T&D to Seller hereunder and such failure continues for more than ten (10) Business Days after written notice of such failure from Seller;
- (b) T&D shall fail to deliver and maintain any Credit Support as required by Article 5, and such failure continues for more than ten (10) Business Days after written notice of such failure from Seller;
- (c) T&D shall fail to either (i) maintain an effective Market Participant Service Agreement under the ISO-NE Tariff or (ii) maintain a settlement account established in accordance with the ISO-NE Rules which is sufficient to implement this Agreement, and such failure continues for more than ten (10) Business Days after written notice of such failure from Seller;
- (d) [Reserved];
- (e) default shall occur in the performance of any other covenant or condition to be performed by T&D hereunder and such default is not cured within thirty (30) days after written notice from Seller specifying the nature of such default, provided that, if Seller promptly commences and maintains diligent efforts to cure such default, then the period to cure the default shall be extended up to an additional sixty (60) days as long as such diligent efforts to cure continue;

- (f) a custodian, receiver, liquidator, or trustee of T&D or of a material portion of its property is appointed or takes possession and such appointment or possession remains uncontested or in effect for more than sixty (60) days; or T&D makes an assignment for the benefit of its creditors or admits in writing its or their inability to pay its debts as they mature; or T&D is adjudicated bankrupt or insolvent; or an order for relief is entered under the Federal Bankruptcy Code against T&D; or any of the material property of T&D is sequestered by court order and the order remains in effect more than sixty (60) days; or a petition is filed against T&D under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation law of any jurisdiction, whether now or subsequently in effect, and is not stayed or dismissed within sixty (60) days after filing; or
- (g) T&D files a petition in voluntary bankruptcy or seeking relief under any provision of any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution, or liquidation law of any jurisdiction, whether now or subsequently in effect; or consents to the filing of any petition against it under any such law; or consents to the appointment of or taking possession by a custodian, receiver, trustee, or liquidator of T&D or a material portion of its property.

ARTICLE 10. REMEDIES; TERMINATION PAYMENT

10.1 Exercise of Remedies in an Event of Default

During the continuance of an Event of Default by either Party hereunder, the non-defaulting Party shall have the right (i) to accelerate all amounts owing between the Parties, (ii) to cease making payments that are or may become due hereunder, (iii) to terminate this Agreement at any time during the continuation of such Event of Default, and (iv) to draw upon any Credit Support provided for in Article 5.

10.2 Calculation of Termination Payment

The non-defaulting Party shall calculate, in a commercially reasonable manner, the Losses (or Gains) and Costs, incurred as a result of the termination of the Agreement. The non-defaulting Party shall set off (i) all such Gains, plus all other amounts due to the defaulting Party under the Agreement against (ii) all such Losses and Costs, plus all other amounts due from the defaulting Party under the Agreement, so that all such amounts shall be netted to a single liquidated amount (the "Termination Payment") payable by one Party to the other; provided that the non-defaulting Party has a duty to mitigate damages and covenants that it will use reasonable efforts to minimize any damages it may incur as a result of the other Party's Event of Default; provided, further, that the defaulting Party shall have an opportunity to minimize or mitigate the damages of the non-defaulting Party prior to the calculation of the Termination Payment. If the non-defaulting Party's

Gains exceed its Losses and Costs, if any, resulting from the termination of the Agreement, the Termination Payment shall be zero; provided that any amounts due and owing by the non-defaulting Party to the defaulting Party prior to the date of the notice of Termination Payment pursuant to Section 10.3 shall nonetheless be due and owing. Nothing in the Agreement shall be construed as obligating the non-defaulting Party, in the event of a Termination, to enter into any brokerage agreements or other third-party agreements to replace a Terminated Transaction. The Termination Payment shall be the sole and exclusive remedy available to the non-defaulting Party in connection with its termination of the Agreement. Notwithstanding the foregoing, in accordance with Section 5.2.4, in the event of a termination by T&D after the Conditions Date but prior to the Commercial Operations Date due to a Seller Event of Default under the Agreement, Seller's liability shall be no more than the amount of the Second Base Security Payment.

10.3 Notice of Termination Payment

As soon as practicable after termination, notice shall be given by the non-defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to or due from the non-defaulting Party. The notice shall include a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Party that owes it within five (5) Business Days after such notice is effective.

10.4 Disputes Regarding Termination Payment

If the defaulting Party disputes the non-defaulting Party's calculation of the Termination Payment, in whole or in part, the defaulting Party shall, within five (5) Business Days of receipt of the non-defaulting Party's calculation of the Termination Payment, provide to the non-defaulting Party a detailed written explanation of the basis for such dispute; provided, however, that if the Termination Payment is due from the defaulting Party, the defaulting Party first shall pay the undisputed portion of the Termination Payment to the non-defaulting Party and transfer credit support in the form of Replacement Security to the non-defaulting Party in an amount equal to the disputed portion of the Termination Payment or actually pay the disputed amount to the non-defaulting Party. Without limiting the foregoing, any disputes between the Parties regarding the calculation of the Termination Payment shall be subject to the dispute resolution provisions of Article 13 of this Agreement.

10.5 Indirect, Special, or Consequential Damages.

THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR

MEASURE OF DAMAGES IS EXPRESSLY HEREIN PROVIDED, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY. SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT IN THE EVENT OF AN ACTION COVERED BY THE INDEMNIFICATION PROVISIONS OF ARTICLE 12 OF THE AGREEMENT, NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT, OR IN CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. IF ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE 11. FORCE MAJEURE

11.1 Force Majeure Event

Neither Party shall be considered to be a defaulting Party under this Agreement or responsible in tort, strict liability, contract, or other legal theory to the other Party for damages of any description for any event or circumstance which causes any interruption or failure of service or deficiency in the quality or quantity of service, or any other failure to perform if such failure: (x) is not caused by the affected Party's fault or negligence; (y) is caused by one or more events, conditions, or circumstances beyond the Party's reasonable control; and (z) that by exercise of reasonable diligence the Party is unable to prevent or overcome (a "Force Majeure"). As long as it satisfies the above criteria, a Force Majeure may include, without limitation, storm, flood, lightning, earthquake, explosion, civil disturbance, labor or material shortage, sabotage, terrorism, war, insurrection, or act of God or the public enemy. Any obligation to pay an amount otherwise owed may not be excused by Force Majeure. Notwithstanding the foregoing, Force Majeure shall not include: (i) economic hardship of either party; (ii) changes in market conditions (including the loss of either Party's markets) and actions or failures to act of any Governmental Authority or ISO-NE that affect the price of energy, capacity, or transmission; (iii) the ability of Seller to sell the Contract Quantity of Energy to a third party at a price greater than as set forth in this Agreement; (iv) the ability of T&D to purchase Energy from a third party at a price lower than as set forth in this Agreement; (v) equipment failures that are caused by the negligence of a Party or the Party's failure to perform routine maintenance; (vi) a Party's failure to timely obtain and maintain all necessary permits; (vii) a Party's failure to satisfy contractual conditions or commitments; or (viii) a Party's lack of or deficiency in funding or other resources.

11.2 Performance Excused

If either Party is rendered wholly or partly unable to perform its obligations hereunder because of Force Majeure as defined above, that Party shall be excused from whatever performance is affected by the Force Majeure to the extent so affected, provided that: (i) the non-performing Party will, as soon as practicable after the occurrence of Force Majeure, give the other Party written notice describing the particulars of the occurrence; (ii) the suspension of performance shall be of no greater scope and of no longer duration than is reasonably required by the Force Majeure; and (iii) the non-performing Party shall use due diligence to remedy its inability to perform. The non-performing Party shall inform the other Party of when it expects to remove the cause, if possible, and what steps it is taking to cure.

ARTICLE 12. INDEMNIFICATION

12.1 Indemnification

Each Party (“Indemnifying Party”) shall indemnify, defend, and hold the other Party (“Indemnified Party”) and its partners, shareholders, members, directors, officers, employees, and agents (including, but not limited to, affiliates and contractors and their employees), harmless from and against all Claims arising from any act or incident occurring when title to the Energy is vested in the Indemnifying Party, unless such Claims are caused by the sole negligence, gross negligence, or willful misconduct of the other Party. If injury or damage results from the joint or concurrent negligent, grossly negligent, or willful misconduct of the Parties, each Party shall be liable under this indemnification in proportion to its relative degree of fault. Such duty to indemnify shall not apply to any claims which arise or are first asserted more than two (2) years after the expiration or earlier termination of this Agreement.

12.2 Procedures

Each Indemnified Party shall promptly notify the Indemnifying Party of any Claim in respect of which the Indemnified Party is entitled to be indemnified hereunder. Such notice shall be given as soon as is reasonably practicable after the Indemnified Party becomes aware of each Claim; provided, however, that failure to give prompt notice shall not adversely affect any Claim for indemnification hereunder except to the extent the Indemnifying Party’s ability to contest any Claim by any third-party is materially adversely affected. The Indemnifying Party shall have the right, but not the obligation, at its expense, to contest, defend, and litigate, and to control the contest, defense, or litigation of, any Claim by any third-party alleged or asserted against any Indemnified Party arising out of any matter in respect of which such Indemnified Party is entitled to be indemnified hereunder. The Indemnifying Party shall promptly notify such Indemnified Party of its intention to exercise such right set forth in the immediately preceding sentence and shall reimburse the Indemnified Party for the reasonable costs and expenses paid or incurred by it prior to the assumption of such contest, defense, or litigation by the Indemnifying Party. If the Indemnifying Party exercises such right in accordance with the provisions of this Article 12 and any Indemnified Party notifies the

Indemnifying Party that it desires to retain separate counsel in order to participate in or proceed independently with such contest, defense, or litigation, such Indemnified Party may do so at its own expense. If the Indemnifying Party fails to exercise its rights set forth in the third sentence of this paragraph, then the Indemnifying Party will reimburse the Indemnified Party for its reasonable costs and expenses incurred in connection with the contest, defense, or litigation of such Claim.

12.3 Claim

For purposes of this Article 12, “Claim” means any claim or action threatened or filed by a person other than a Party hereto, and whether groundless, false, or fraudulent, that directly or indirectly relates to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorney’s fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination of this Agreement, and whether such claims are exemplary or punitive in nature.

ARTICLE 13. DISPUTE RESOLUTION

13.1 Resolution by Officers of the Parties

In the event of any dispute between the Parties arising out of this Agreement, the Parties shall refer the matter to their duly authorized officers for resolution. The duly authorized officers may delegate the matter to a non-officer, but only if such delegate is granted full authority to resolve such dispute. If such officers of the respective Parties fail to resolve the dispute within ten (10) days from the referral, the Parties shall bring the dispute to the Commission, the FERC or ISO-NE, or arbitration for resolution in accordance with Section 13.2 and Section 13.3 below.

13.2 Resolution by Commission

13.2.1 The Parties shall provide prompt notice to the Commission of any dispute between them that the Parties fail to resolve under Section 13.1.

13.2.2 The Parties shall bring before the Commission, and the Commission shall hear, disputes the Parties fail to resolve under Section 13.1 that concern any of the following: (i) modification or amendment of this Agreement; (ii) the conditions and milestones in Article 2; (iii) the achievement of Commercial Operation by the Commercial Operation Obligation Date; or (iv) the Credit Support and Performance Assurance provisions of Article 5.

13.2.3 Notwithstanding Section 13.2.2 or Section 13.2.4, for a dispute involving the nonpayment of any amounts due from one Party to the other Party hereunder (a “Payment Dispute”), the complaining Party shall not refer the dispute to any court, but may instead, at its sole election, bring the dispute directly to binding arbitration in Portland, Maine, in which case the arbitration provisions of Section 13.3 shall apply.

13.2.4 For any dispute the Parties fail to resolve under Section 13.1 and that does not fall under the categories listed in Section 13.2.2 or Section 13.2.3, the Parties shall bring the matter to the Commission for a threshold finding of jurisdiction by the Commission or the Commission's delegate. The Commission or its delegate shall make this threshold finding within fourteen (14) days of the Parties' bringing the matter before it. If the Commission or its delegate finds that the Commission has jurisdiction over the disputed matter, then the Commission shall hear and render a decision upon the dispute. If the Commission or its delegate finds that the Commission does not have jurisdiction over the disputed matter, or the Commission or its delegate make no finding of jurisdiction within the fourteen-day period, the complaining Party shall not refer the dispute to any court, but shall instead, at its sole election, bring the dispute to one of the following:

- (1) FERC; or
- (2) binding arbitration in Portland, Maine, in which case the arbitration provisions of Section 13.3 shall apply.

13.3 Arbitration Request; Procedures

If any dispute that is eligible for arbitration has not been resolved under Sections 13.1 or 13.2, either Party may give notice in writing to the other of its desire to submit the dispute to arbitration, and may designate an arbitrator. Within fifteen (15) days after the receipt of such notice, the other Party may, in writing, serve upon the Party invoking the arbitration a notice designating an arbitrator on its behalf. If the Party notified to appoint the second arbitrator does not do so within such time, the Party invoking arbitration may proceed with the single arbitrator. If the Party notified to appoint the second arbitrator does so timely, the two arbitrators chosen shall within fifteen (15) days after the appointment of the second arbitrator, in writing, designate a third arbitrator. If the first and second arbitrators are unable to agree on a third arbitrator within fifteen (15) days of the appointment of the second arbitrator, the first and second arbitrator shall invoke the services of the American Arbitration Association to appoint a third arbitrator. The third arbitrator shall, if practicable, have special competence and experience with respect to the subject matter under consideration. An arbitrator so appointed shall have full authority to act under this Section. No arbitrator, whether chosen by a Party hereto or appointed, shall have the power to amend this Agreement. The Party calling the arbitration shall, within twenty (20) days after either the failure of the other Party to name an arbitrator or the appointment of the third arbitrator, fix, in writing, a time and a place of hearing (which shall be in Portland, Maine), to be not less than twenty (20) days from delivery of notice to the other Party. The arbitrator(s) shall, thereupon, proceed promptly to hear and determine the controversy under the then current rules of the American Arbitration Association for the conduct of commercial arbitration proceedings, except that if such rules shall conflict with the then current provisions of the laws of the State of Maine relating to arbitration, the laws of the State of Maine relating to arbitration shall prevail. The arbitrator(s) shall fix a time within which the matter shall be submitted to him or them by either or both Parties, and shall make the decision, within ten (10) days after the

final submission to the arbitrator(s) unless, for good reasons to be certified by the arbitrator(s) in writing, the arbitrator(s) shall extend the time. The decision of the single arbitrator, or two of the three arbitrators, shall be taken as the arbitration decision. The arbitration decision shall be made in writing and in duplicate, and one copy shall be delivered to each of the Parties. In the arbitration award, the arbitrator(s) shall determine how the expense of the arbitration shall be borne, except that each Party shall pay the costs of its own counsel. Each Party shall accept and abide by the arbitration decision. The award of the arbitral tribunal shall be final except as otherwise provided by applicable law. Judgment of the award may be entered by the prevailing Party in any court designated in Section 14.14, or the prevailing Party may make application to any such court for judicial acceptance of the award and an order of enforcement.

13.4 Binding Award

This agreement to arbitrate and any award made hereunder shall be binding upon the successors and permitted assigns and any trustee or receiver of each Party.

13.5 Continued Performance

No dispute shall interfere with the Parties' continued fulfillment of their obligations under this Agreement pending the decision of the Commission under Section 13.2 or the arbitrator(s) under Section 13.3.

ARTICLE 14. MISCELLANEOUS PROVISIONS

14.1 Assignment

14.1.1 No assignment by either Party (or any successor or assignee thereof) of its rights and obligations hereunder may be made or become effective without the prior written consent of the other Party, which consent may not be unreasonably withheld, conditioned, or delayed. Any assignments by either Party shall be in such form as to assure that such Party's obligations under this Agreement will be honored fully and timely by any succeeding party. Any attempted assignment in violation of this Section 14.1.1 shall be null and void.

14.1.2 Notwithstanding Section 14.1.1, either Party may assign this Agreement without the prior written consent of the other Party as collateral security to any lenders, investors, or financial institutions in connection with any financing (including, without limitation, in any sale leaseback or leveraged leasing structure) by the assigning Party and the non-assigning Party shall execute and deliver a consent to collateral assignment, estoppel certificates and opinions as may be reasonably requested by the lenders or financial institutions. Any reassignment of this Agreement by such lenders or financial institutions shall be subject to the assignee meeting all the requirements of the Assigning Party under this Agreement, including, without limitation, the Credit Rating and security provisions of Article 5, as applicable. T&D shall execute and deliver estoppel certificates and opinions as may be reasonably requested by financial institutions in connection with tax equity transactions in respect of the Facility, provided that Seller shall be

responsible for all reasonable, documented costs of such requests. T&D acknowledges and agrees that any consent requested by Seller's lenders or financial institutions shall include customary provisions reasonably requested by such lenders or financial institutions, including but not limited to: (i) providing notice to such lender or financial institution of a breach or default that could lead to an Event of Default by Seller; and (ii) T&D will allow such lender or financial institution to cure a Seller breach or default under the Agreement.

14.1.3 Notwithstanding Section 14.1.1, T&D may assign this Agreement without the prior written consent of Seller in connection with (i) any restructuring, disaggregation, or divestiture involving the separation of any of the generation, transmission, or distribution functions of T&D into separate entities or the divestiture of all or a major portion of the assets of T&D which serve any one of such functions, provided that the assignee of this Agreement must be capable of performing T&D's obligations under this Agreement; (ii) any acquisition, consolidation, merger, or other form of combination of T&D by or with any person or entity; (iii) the purchase, lease or other acquisition (in one or a series of transactions) of all or substantially all of the assets of any other person or entity; (iv) the conveyance, sale, lease, transfer or other disposition (in one or a series of transactions) of all or substantially all of the assets of T&D; or (v) as collateral security to any lenders or financing party in connection with any financing by T&D.

14.2 Notices

All notices, requests, and other communications hereunder (herein collectively "notice"), other than invoices, shall be deemed to have been duly delivered, given, or made to or upon any Party hereto if in writing and delivered by hand or by certified or registered mail, postage pre-paid, return receipt requested, or by electronic mail with receipt confirmed in writing by the recipient, or to a courier who guarantees next Business Day delivery to such Party at its address set forth below or to such other address as such Party may at any time, or from time to time, direct by notice given in accordance with this Section 14.2.

IF TO T&D:

Emera Maine
P.O. Box 932
Bangor, ME 04402-0932
ATTN: Legal Notices

For overnight:
Emera Maine
970 Illinois Ave.
Bangor, ME 04401
ATTN: Legal Notices

IF TO SELLER:

Three Rivers Solar Power, LLC
c/o Swift Current Energy
184 High Street, Suite 701
Boston, MA 02110
ATTN: Legal Department

14.3 Compliance with Laws

At all times during the Term, the Parties shall comply with all laws, rules, requisitions, and codes of all governmental authorities having jurisdiction over each of their respective businesses which are now applicable, or may be applicable hereafter, including without limitation, all special laws, policies, ordinances, or regulations now in force, as amended or hereafter enacted, which the failure to comply with will result in a material adverse effect on the other Party. The Parties shall maintain all licenses, permits, and other consents from all governmental authorities having jurisdiction for the necessary use and operation of their respective business, which the failure to maintain will result in a material adverse effect on the other Party. Nothing herein shall be deemed a waiver of the Parties' right to challenge the validity of any such law, rule, or regulation.

14.4 Obligation of Good Faith

Each Party shall cooperate in good faith with the other Party and take all practicable actions and devote the resources reasonably necessary to achieve the objectives of this Agreement.

14.5 Fees and Expenses

Except as otherwise provided herein, each of Seller and T&D shall pay all fees and expenses incurred by, or on behalf of, such Party in connection with, or in anticipation of, entering into this Agreement.

14.6 Headings

The headings to articles and sections throughout this Agreement are intended solely to facilitate reading and references to all articles, sections, and provisions of this Agreement. Such headings shall not affect the meaning or interpretation of this Agreement.

14.7 Entire Agreement; Successors and Assigns; Amendment, Modification, or Waiver

This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof, supersedes any and all previous understandings between the Parties with respect to the subject matter hereof, and binds and inures to the benefit of the Parties, their successors and permitted assigns. No amendment or modification of, and no waiver of any portion of, this Agreement shall be effective or

enforceable unless it is reduced to writing executed by both Parties, and has the prior approval of the Commission.

14.8 Severability

The invalidity or unenforceability of any provisions of this Agreement shall not affect the other provisions hereof. If any provision of this Agreement is held to be invalid, such provision shall not be severed from this Agreement; instead, the scope of the rights and duties created thereby shall be reduced by the smallest extent necessary to conform such provision to the applicable law, preserving to the greatest extent the intent of the Parties to create such rights and duties as set out herein and the economic benefits and burdens allocated to each Party under this Agreement. If necessary to preserve the intent of the Parties, the Parties shall negotiate in good faith to amend this Agreement, adopting a substitute provision for the one deemed invalid or unenforceable that is legally binding and enforceable.

14.9 Further Assurances

Each Party shall execute and deliver any additional documents and instruments and perform any additional acts that may be reasonably necessary or appropriate to effectuate and perform the provisions of this Agreement, the transactions contemplated hereunder, and the intention of the Parties.

14.10 Changes in Law

If during the Term any laws or regulations shall change which govern any transaction contemplated herein or business operations so as to make either unlawful or impossible to perform, then T&D and Seller hereby agree to effect such modifications to this Agreement as shall be reasonably necessary for the Agreement to accommodate any such legal or regulatory changes and to preserve, as closely as possible, the basic intent and substance of this Agreement and the economic benefits and burdens allocated to each Party under this Agreement. If the Parties are unable to agree to such amendments, the matter shall be subject to the dispute resolution provisions of Article 13 of this Agreement.

14.11 Changes in ISO-NE Rules

If, after the execution of this Agreement, any right or obligation of a Party under this Agreement is materially altered as the result of any revision to ISO-NE Rules, the Parties agree to negotiate in good faith in an attempt to amend this Agreement to conform to the revised ISO-NE Rules. The intent of the Parties is that any such amendment will preserve, as closely as possible, the basic intent and substance of this Agreement and the economic benefits and burdens allocated to each Party under this Agreement. If the Parties are unable to agree to such amendments, the matter shall be subject to the dispute resolution provisions of Article 13 of this Agreement.

14.12 Counterparts

This Agreement may be executed simultaneously in two or more counterparts, any of which need not contain the signatures of more than one Party, but all such counterparts taken together shall constitute one and the same Agreement. Signatures delivered by facsimile, PDF, or other electronic means shall be deemed original signatures.

14.13 Interpretation

In the event of any dispute concerning the construction or interpretation of this Agreement or any ambiguity hereof, there shall be no presumption that this Agreement or any provision hereof be construed against the Party who drafted this Agreement.

14.14 Applicable Law and Forum

When not in conflict with federal laws, interpretation and performance of this Agreement shall be in accordance with, and shall be controlled by the laws of the State of Maine, except its conflict of laws provisions if they would require the application of the laws of any other jurisdiction. Except for those matters covered in this Agreement and jurisdictional to FERC or the Commission, or the appellate courts having jurisdiction over FERC matters, any legal action or proceeding arising under or relating to this Agreement must, if it is not subject to arbitration hereunder, be brought in a court of the State of Maine or a federal court located in the State of Maine. For example, any action to enforce an arbitration demand or to confirm or enforce an arbitration award shall be brought in a court in the State of Maine. Both Parties hereby consent to the exclusive jurisdiction of the State of Maine for the purposes of hearing and determining any action not preempted by federal law.

14.15 Several Obligations

Except where specifically stated in this Agreement to be otherwise, the duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership, or joint venture or to impose a trust or partnership duty, obligation, or liability or agency relationship on or with regard to either Party. Each Party shall be individually and severally liable for its own obligations under this Agreement.

14.16 Continuing Obligations

Notwithstanding any assignments of rights or duties hereunder, neither Party shall be relieved of any duties or responsibilities under this Agreement and this Agreement shall continue in accordance with its terms and such Party shall be and remain liable to the other under all provisions of this Agreement unless the other Party has expressly consented in writing to such release of duties and responsibilities, such consent not to be unreasonably withheld. Further, any payments made by one Party to an assignee of the other Party or any other actions taken by such Party with respect to such assignee shall be

in full satisfaction of any duties or responsibilities which the Party would otherwise owe to the other Party, as if made or taken directly to such other Party.

14.17 Changes in Rates, Charges, Terms, or Conditions

The rates, charges, terms, and conditions contained in this Agreement are not subject to change under Sections 205 or 206 of the Federal Power Act, as either section may be amended or superseded, absent the mutual written agreement of the Parties. It is the intent of this Section that, to the maximum extent permitted by law, the rates, charges, terms, and conditions of this Agreement shall not be subject to change. Each Party, for itself and its successors and assigns, hereby expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205 and/or 206 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any section of this Agreement specifying the rate, charge, classification, or other term or condition agreed to by the Parties. It is the intent of the Parties that, to the fullest extent permitted by applicable law, neither Party shall unilaterally seek to obtain from FERC any relief changing the rate, charge, classification, or other term or condition of this Agreement, notwithstanding any subsequent changes in applicable law or market conditions that may occur. If it were to be determined that applicable law precludes the Parties from waiving their rights to seek changes from FERC to their market-based power sales contracts (including entering into covenants not to do so) then this Section 14.17 shall not apply, provided that, consistent with Section 14.18, neither Party shall seek any such changes except solely under the “public interest” application of the “just and reasonable” standard of review and otherwise as set forth in Section 14.18.

14.18 Regulatory Acknowledgement and Agreements

Absent the agreement of both Parties to the proposed change, the Parties acknowledge and agree that, if this Agreement is or may be subject to review under the Federal Power Act, the standard of review for any change or modification to the pricing provisions of this Agreement or any rate, charge, classification, term, or condition of this Agreement, whether proposed by a Party (if any waiver in Section 14.17 is unenforceable or ineffective as to such Party) or by any person who is not a Party hereto or FERC acting *sua sponte* shall be the “public interest” application of the “just and reasonable” standard of review set forth in *United Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Utility District No. 1 of Snohomish*, 554 U.S. 527 (2008) (the “Mobile-Sierra” doctrine). If the “public interest” standard cannot be applied to a non-party to this Agreement, then the most stringent standard shall be applicable. Each Party agrees that if it seeks to amend any applicable power sales tariff during the Term, such amendment will not in any way materially and adversely affect this Agreement without the prior written consent of the other Party. Each Party further agrees that it will not assert that, nor defend itself on the basis that, any applicable tariff is inconsistent with this Agreement.

14.19 Survival

The Parties' rights and obligations under Article 8, Sections 10.2 through 10.5, Article 12, Article 13, and Sections 14.4, 14.14, and 14.19 shall survive expiration or termination of this Agreement for any reason.

IN WITNESS WHEREOF, and intending to be legally bound hereby, the Parties have caused this Agreement to be duly executed by their respective duly authorized officers as of the date and year first above written.

EMERA MAINE

By: _____

Name: _____

Title: _____

THREE RIVERS SOLAR POWER, LLC

By: _____

Name: _____

Title: _____

EXHIBIT A-1

OFFICER'S CERTIFICATE

OF

THREE RIVERS SOLAR POWER, LLC

I, [officer's name], am [title] of Three Rivers Solar Power, LLC, a Delaware limited liability company ("Seller"), and as such am authorized to execute and deliver this certificate on behalf of Seller in connection with the Solar Energy Purchase and Sale Agreement ("Agreement"), dated as of [insert date] between Emera Maine ("T&D") and Seller. All capitalized terms used herein and not defined shall have the meanings set forth in the Agreement.

I hereby certify as follows:

1. The representations and warranties of Seller contained in the Agreement are true and correct as of the date hereof.
2. Each of the conditions precedent to the obligations of Seller under Section 2.1 of the Agreement have been either satisfied or waived by Seller on and as of the date hereof.
3. Each of the development milestones in Section 2.2 have been completed.
4. The Conditions Date of the Agreement shall be [insert date].

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the _____ day of _____, 20____.

By: _____

Name: _____

Its: _____

EXHIBIT A-2

OFFICER'S CERTIFICATE

OF

EMERA MAINE

I, [officer's name], am [title] of Emera Maine, a Maine corporation ("T&D"), and as such am authorized to execute and deliver this certificate on behalf of T&D in connection with the Solar Energy Purchase and Sale Agreement ("Agreement"), dated as of [insert date] between T&D and Three Rivers Solar Power, LLC ("Seller"). All capitalized terms used herein and not defined shall have the meanings set forth in the Agreement.

I hereby certify as follows:

1. The representations and warranties of T&D contained in the Agreement are true and correct as of the date hereof.
2. Each of the conditions precedent to the obligations of T&D under Section 2.1 of the Agreement have been either satisfied or waived by T&D on and as of the date hereof.
3. The Conditions Date of the Agreement shall be [insert date].

IN WITNESS WHEREOF, the undersigned has executed this Certificate as of the _____ day of _____, 20____.

By: _____

Name: _____

Its: _____

EXHIBIT B

CONTRACT PRICING

The following table sets forth the pricing applicable to the Energy that Seller delivers and sells to T&D under the Agreement.

Contract Year	Price (\$/MWh)
1	\$35.00
2	\$35.88
3	\$36.78
4	\$37.70
5	\$38.64
6	\$39.61
7	\$40.60
8	\$41.62
9	\$42.66
10	\$43.73